



How to
**prepare your
business for sale**

There will come a time for every business owner to consider the succession of his or her business.

Ensuring that your business is an attractive target for potential buyers and achieves a good market value requires preparation across a number of different disciplines. Two of the most crucial to address are the legal and the financial perspectives.

Nick Wallis of Gerald Edelman and Parmjit Bhogal of Wellers Law Group have both helped many business owners sell their businesses. To help you get started with readying your business for sale they have provided their expert guidance on the most important aspects of your legal and financial preparations.

Parmjit Bhogal of Wellers Law Group



Parmjit has wide ranging experience as a corporate and commercial lawyer across many sectors and especially in the technology and healthcare fields. He regularly advises on M&A transactions, management buy-outs, venture capital and private equity transactions. Parmjit also provides access to Wellers' wider set of legal services, including property and employment advice.

Nick Wallis of Gerald Edelman



Nick is a Partner and heads up the Deal Advisory team at Gerald Edelman, where he works with businesses who are looking to sell, buy, invest, raise equity or debt funding.

Nick has over ten years' experience. In that time he has led mid-market private company M&A transactions across a range of sectors, including leisure, industrial products, pharmaceuticals, transport and business services.

Nick supports clients with all round deal advisory solutions, including due diligence support, financial and business modelling and valuation support.

What to get right from a legal perspective.

There will come a time for every business owner to consider the succession of his or her business. Whether you are a sole trader, partner in a partnership or an owner / manager of a company, you may have already thought about selling your business and planned in advance, or you may have decided to sell but not thought much further ahead. If you fall within the latter category there are a number of matters that you should start to consider now in preparation for when you do sell.

Preparation

It is a nearly impossible task to identify the right time to sell your business. There are a number of extraneous factors such as the economy, the market place, finding the right buyer and your own personal circumstances. However, the task can be made simpler and less stressful through early preparation and getting your business ready for

sale with the assistance of your professional team.

One golden rule for a seller is to think like a buyer; if you put yourself in the buyer's position, what would you ask about your business? Are there any parts or aspects of your business that may need explaining to a potential buyer? Are any departments of your business holding back the overall performance of the business that may put

buyers off? Are there any improvements that can be made to the business which will attract a larger market? Is your business structure and business documentation in order? These are some of the points to consider at the outset with your professional team to ensure that any issues can be identified and resolved at an early stage.

Business health check

Documentation

When preparing a business for sale it is advisable to carry out a “business health check”. All well advised buyers will carry out thorough legal, property and financial diligence into the affairs of the target business being acquired. Inevitably queries and issues may come to surface. In order to avoid this and delays in the sale process (or the buyer aborting the purchase) it is advisable to carry out a business health check on your business in connection with its documentation and processes. Particular consideration should be paid to whether valid contracts and agreements are in place with third parties, for example with suppliers to your business. If you are relying on expired or oral contracts and agreements, these should be updated as any anomalies will be identified in the buyer’s due diligence process. The terms of business that apply to your customers and clients may be historic and should also be reviewed and updated to ensure that they reflect the current trading and market position.

You should ensure that your contracts of employment with your employees and third party contractors correctly reflect the current terms and conditions. As can be often the case, terms of employment and engagement become varied over time but the contract is not updated, or in some circumstances contracts are not put in place at all. This should be corrected prior to any sale as it will be picked up by the buyer. The buyer will want to know what the current terms are.

Property

If you operate your business from freehold or leasehold premises, a buyer of your business is likely to want to acquire the premises from where the business trades. It is important to ensure that the seller of the business has the right of occupation to the trading premises (whether through a lease or ownership of the freehold to

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the property). It is not inconceivable that over time the structure of the business changes, for example the seller commences trading as a sole trader but then ‘incorporates’ the business to operate it through a limited company. The right to occupy the premises from where the business trades should have been obtained by the company when the incorporation took place.

Regulation

If your business provides regulated services (for example dental or pharmaceutical services) or provides goods that require a licence or consent (such as the supply of alcohol) it is of paramount importance to ensure that all the requisite licence and consents are valid and in place. A buyer will look into the regulatory aspects of the business as part of their due diligence, and if the licences and authorisations are not in place, it will delay the sale, or worse, the business may not be saleable.

The right team

As a seller you should seek early advice from your sales agent, accountant and solicitor regarding your proposed sale, well in advance of your ideal date of completion. If you have had no previous reason to assimilate a team of professionals to assist on a business sale, you should consider engaging the services of sales agents, accountants and solicitors as early as possible to guide you through the preparation and the process to ready your business for sale.

Pitfalls

The “dream price” and the market price

If the seller has an unrealistic selling price, the business will not sell as it is ultimately the market that determines the price. Coupled with this, the buyer may have second thoughts about the price or may wish to negotiate, whether or not the seller has been unrealistic or not.

If the price is negotiated, this is likely to protract the progress of the sale. This can be avoided by the seller having a sensible price expectation at the outset of the process and putting in place legal documentation to secure a deposit from the buyer.

Hidden issues

If the seller has any issues attached to the business, for example ongoing litigation, this should be revealed as part of the buyer's due diligence process. If issues are not revealed, hiding the problems will not mean that they will go away. If the buyer discovers any issues later on in the sale process, the buyer is very likely to proceed with caution, and perhaps suspicion, and may even decide not to proceed with the purchase. This is likely to result in a significant waste of time and money for buyers, sellers and the professionals involved. Business related issues can usually be managed if they are disclosed early on in the sale process so as to prevent any surprises to a buyer.

Structure of the sale

It may appear obvious that the buyer and the seller of a business should know what one is selling and the other is buying. However, it is not uncommon for the buyer to believe one thing and the seller, another. For example it may be that the business is operated by the seller as a partnership, and the buyer's understanding or assumption is that the business was operated as a company. To avoid any misunderstandings, the

seller should seek early advice from their sales agent, accountant and solicitor, who will be able to advise on the most favoured structure for the sale and also draft a document called a "heads of terms" or "terms of sale" that will provide details of the business being sold. The sales document can then be presented to a potential purchaser on a confidential basis. This will help to avoid any issues on what is being sold and purchased.

Timescales and expectations

Both the seller and the buyer should have realistic expectations on the timescales involved for a successful sale to take place. Sales and purchases of businesses have a higher success rate if the parties are properly advised by professionals that specialise in company sales and have relevant experience in the particular commercial sector in question. The professionals will also be able to provide a realistic time frame for completion, thereby preventing the buyer or the seller becoming frustrated by the pace of progress.

With early preparation and careful planning the sale of a business can run smoothly and the stress can be taken out of the process. All successful sales require time and commitment, particularly from the seller, as the seller knows the business better than anyone else. It is highly advisable to seek early advice. Lack of preparation and the absence of a sales strategy are by far the most common mistakes that business owners make.

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What to consider from a financial perspective.

Deciding to sell a company is one of the biggest decisions a business owner will make. Selling means letting go and moving on — and it's hard to do. However, the benefits to selling and achieving the value for all the blood, sweat and tears that have been put in to making the business a success, mean that M&A activity in the UK is very active right now, even with the current uncertain political and economic environment.

An M&A exercise will normally take six to nine months to complete, so it is imperative that business owners factor this timing in when they begin to think about selling their business.

Preparation

Is the business prepared?

This is not only in terms of being ready for a due diligence exercise, but also having a succession plan for the exiting shareholders.

If neither of these things have been actioned, it will reduce the likelihood of a successful transaction.

Are the sellers prepared?

The six to nine-month process is intense, and

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whilst it is the job of M&A advisers to take as much work away from the sellers and management team as possible, the process will require significant time commitment from the sellers and therefore it is very important that they are mentally prepared for this.

In addition, the sellers must be prepared from a personal perspective. What will their personal life look like without owning their business? This is particularly important if the seller is involved in the business on a daily basis. If the personal aspects of the sale have not been considered, it is usually not the right time to think about selling.

Business health check

Is the business on the right trajectory?

The best time to sell a business is when it is demonstrating sustainable growth, before it gets to a stage of plateau or decline. Acquirers place more value on a growing business; a flat or declining business may deter potential buyers.

A seller may not want to exit too early as they may not achieve maximum value, but at the same time they must avoid potential hiccups that could result in value being reduced. These hiccups are often unexpected or could be caused by wider economic factors that are out of the control of management. More risk averse business owners may decide that now is the right time to sell, knowing exactly what their business looks like today, and letting someone else take the risk on potential future growth.

Clearly, riskier sellers, with less time pressure, may decide to gamble on the business growing further and therefore achieving greater value down the line, knowing that if the growth doesn't occur as planned, they risk getting a reduced price for the business, or not selling at all.

However, at Gerald Edelman we are seeing more of a trend for 'partial' sales, where sellers de-risk by selling a portion of the business today whilst still holding on to some equity in order to benefit from potential future growth – which sometimes can be enhanced through the infrastructure and synergies brought by a buyer.

Finding a buyer

We firmly believe that there is a buyer out there for every business. The price that they are willing to buy it at, however, may be a challenge. The first step is finding interested parties before thinking

about the price and deal structure. Therefore, it is crucial to 'present' the business in the right way and ensure that future opportunities for growth have enough credibility to make them believable. Being able to articulate the key unique selling points of a business and, critically, the potential sales synergies between the potential buyer and seller, are fundamental in obtaining interest.

We regularly come across businesses that have been run successfully and make founders good money – but this doesn't necessarily make them attractive for a buyer. A buyer will usually want to buy a business with an established management team that are staying in the business, alongside significant opportunities for growth and expansion. Therefore, they will want to know how future growth is to be achieved, and what evidence the seller has in this regard.

Pitfalls

Finding buyers does not always ensure success; deals often fall through after this point because of poor trading during the process, and issues arising during due diligence, such as historical tax issues, intellectual property, litigation against the business etc. Poor trading can be avoided by ensuring that the primary focus of the selling shareholders and management team is continuing to run and grow the business. As soon as the business starts to underperform against targets, potential buyers start questioning the business and the credibility of the targets in the first place.

Due Diligence

It is critical to ensure that your business is properly prepared for a due diligence exercise. This process is becoming more and more intense, especially in the current economic climate, where buyers and investors are less willing to take risks. Ensuring that you have no 'skeletons in the closet' and that you have all potential issues resolved before approaching the market is critical to help ensure the successful completion of a deal. When a buyer performs due diligence on a business, much like when we do a survey to buy a property, we want to make sure there is a clean bill of health. The more issues that arise, however minor they may be, the more this is likely to put a buyer off, as they may start to wonder what else may be 'wrong' with the business.

Clearly a 'failed' exercise to sell a business is disappointing and can be unsettling for the

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management team that are involved and it may limit opportunities to sell further down the line. This can be easily mitigated by planning your exit as far in advance as possible – in this way, you can ensure that you have started implementing your succession planning, provided credible evidence of your future growth, removed those skeletons,

and critically, have everything prepared and in order for when a buyer is found, or comes knocking themselves.

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If you are considering selling your business and require legal or financial advice, contact:

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